

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 3:20-cr-00021-MMD-CLB-1

Plaintiff,

ORDER

v.

GEORGE WYATT ELMS,

Defendant.

**I. SUMMARY**

Defendant George Wyatt Elms was indicted on three counts regarding the government's allegation that he and a co-Defendant<sup>1</sup> broke in through the roof of a hardware store in Winnemucca, Nevada and stole some 25 firearms after setting a brushfire as a distraction. (ECF No. 10.) Before the Court is Mr. Elms' motion to suppress: (1) statements he made during an interrogation after purportedly invoking his right to remain silent and any evidence derivative of those statements; and (2) the direct and derivative fruits of a search of the Frontier Motel in Winnemucca under a purportedly overbroad warrant.<sup>2</sup> (ECF No. 62 ("Motion").)<sup>3</sup> Because the Court agrees with the

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<sup>1</sup>Travis Klyn, who has since pleaded guilty. (ECF No. 66.)

<sup>2</sup>The government argues this portion of the Motion is moot because it does not intend to introduce any evidence gathered from the search of the Frontier Motel at trial, and there is no evidence to suppress in any event. (ECF No. 68 at 10-11.) Elms does not respond to the government's argument in his reply but does include this sentence in his conclusion: "Additionally, the direct and derivative fruits of the Frontier Motel search must be suppressed, including the interview of the 'known but unnamed' room occupant." (ECF No. 70 at 9-10.) The Court agrees with the government that the portion of the Motion regarding the search of the Frontier Motel is moot and denies it on that basis. However, the denial is without prejudice to Mr. Elms renewing this argument in the event the government reverses itself and later attempts to introduce some evidence gathered from the search of the Frontier Motel against him.

<sup>3</sup>The government filed a response (ECF No. 68), and Mr. Elms filed a reply (ECF No. 70).

1 government that Mr. Elms did not unambiguously invoke his right to remain silent, and as  
2 further explained below, the Court will Deny the Motion.

## 3 **II. FACTUAL BACKGROUND**

4 The Court relies on documents filed by the parties in support of the Motion and  
5 related briefs to construct this factual background, most notably an audio recording of the  
6 challenged interrogation.

7 The hardware store in Winnemucca was robbed in the very early morning hours of  
8 February 19, 2020. (ECF No. 68-1 at 2.) Police discovered the brushfire that same night.  
9 (ECF No. 68-2 at 2.) Police subsequently received an anonymous tip that Mr. Elms was  
10 involved in the burglary. (ECF No. 68-5 at 2.)

11 Later that same day, February 19, Mr. Elms was arrested in Reno on an unrelated  
12 probation violation; he failed a drug test. (ECF No. 62-1 at 8.) Mr. Elms was taken to the  
13 Washoe County Detention Facility (“WCDF”). (*Id.*) Two agents from the Bureau of  
14 Alcohol, Tobacco, and Firearms (“ATF”) learned of this and went to WCDF the evening  
15 of February 21 to interview him. (*Id.*; *see also* ECF No. 68-4 at 2.)

16 The two ATF agents<sup>4</sup> began the interview by reading Mr. Elms his *Miranda* rights  
17 and asking him if he would sign a consent form indicating he had been read his *Miranda*  
18 rights—he agreed and signed the form. (*Id.* at 2 (stating as such), 4 (signed consent form);  
19 *see also* ECF No. 62-2<sup>5</sup> at 2:20-3:30 (reading Mr. Elms his *Miranda* rights and Mr. Elms  
20 signing the consent form).) The ATF agents began the interrogation by chatting with Mr.  
21 Elms about his background; where he’s from, where he works or has worked, etc. At  
22 around the 13-minute mark, the ATF agents ask Mr. Elms if he knows anything about the  
23 “shenanigans” that were going on out in Winnemucca; Mr. Elms responds that he heard  
24 about the firehouse getting robbed. (*Id.* at 13:00-13:24.)

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26 <sup>4</sup>The Court cannot tell which ATF agent is speaking at which times on the  
27 recording, so the Court will generically refer to them as ‘an ATF agent’ or ‘the ATF agent.’

28 <sup>5</sup>This exhibit is a DVD-ROM containing an audio recording of the ATF agents’  
interview of Mr. Elms, so the Court’s citations refer to the minute:second marks within the  
audio recording.

1           The ATF agents were not interviewing Mr. Elms about the firehouse. They were  
2           there to learn about the hardware store burglary. After talking for a few more minutes  
3           about Winnemucca, one ATF agent states, “well, obviously we’re here for a reason.” (*Id.*  
4           at 15:57-16:00.) Mr. Elms responds, “right,” “I’m not that popular,” and chuckles. (*Id.* at  
5           16:00-16:08.) An ATF agent continues from there to prompt Mr. Elms as to whether he  
6           knows why the ATF agents are there to interview him, and Mr. Elms says a few times that  
7           he does not know, eventually offering that he might have some information for them if  
8           they tell him why they are here to interview him. (*Id.* at 16:08-17:03.) One ATF agent then  
9           tells Mr. Elms that he “already knows” Mr. Elms is “bullshitting with me a little bit” because  
10          the agent knows Mr. Elms was staying at the Frontier Motel, and Mr. Elms denies it,  
11          though Mr. Elms then concedes he had a room there, room 19, and he had heard it had  
12          been raided. (*Id.* at 17:04-19:05.)

13          One of the two ATF agents then moves the conversation along by saying, “Alright,  
14          so, the bottom line is that a store was hit; I think you know what I’m talking about.” (*Id.* at  
15          19:45-19:49.) Mr. Elms responds, “okay.” (*Id.* at 19:50.) The ATF agent counters, “a  
16          bunch of guns were stolen from that store, you know anything about that?” (*Id.* at 19:49-  
17          19:54.) Mr. Elms responds, “maybe.” (*Id.* at 19:55-19:56.) After the ATF agent follows up  
18          by asking what he knows about that, Mr. Elms responds that he knows who did it. (*Id.* at  
19          19:57-20:02.)

20          For the next couple of minutes, under prompting from the ATF agents, Mr. Elms  
21          declines to say much more, and says that he was not there, but that a friend told him that  
22          a man named Cruz was planning the burglary of the hardware store. (*Id.* at 20:03-21:50.)  
23          One ATF agent seeks clarification that they are all talking about the same thing, and Mr.  
24          Elms says that he thinks they are—C.B. Brown’s. (*Id.* at 21:50-21:57.) One ATF agent  
25          asks Mr. Elms what that is, and Mr. Elms responds “you know what it is;” a “True Value”  
26          hardware store. (*Id.* at 21:57 at 22:13.)

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1 For the subsequent few minutes, the ATF agents try to get more information from  
 2 Mr. Elms about the burglary of the hardware store, suggesting that he was involved in it  
 3 and will be held responsible for it, though Mr. Elms continues to deny any involvement.  
 4 (*Id.* at 22:13-25:45.)

5 At this point, one of the ATF agents again returns to his belief that Mr. Elms is  
 6 “bullshitting” them. (*Id.* at 25:45-25:50.) The ATF agent says that they know more than  
 7 they have thus far let Mr. Elms know. (*Id.* at 25:50-26:00.) Mr. Elms responds, “I had  
 8 nothing to do with that hit.” (*Id.* at 26:00-26:05.) The ATF agent counters again with his  
 9 view that if Mr. Elms continues to sit there and say he did not do anything, it will not do  
 10 Mr. Elms any good. (*Id.* at 26:06-26:21.) Mr. Elms responds, “I’m not saying I didn’t do  
 11 anything; I did a lot.” (*Id.* at 26:21-26:24.) The ATF agent basically responds, ‘sure, you  
 12 told us you did drugs, but we’re not here to talk about that.’ (*Id.* at 26:25-26:44.) “But,  
 13 once again,” the ATF agent continues, “if you’re just going to sit here and bullshit us about  
 14 what happened that day, we’re not going to get anywhere.” (*Id.* at 26:45-26:50.) This  
 15 segues into the portion of the conversation at the heart of the Motion.

16 The agent continues, telling Mr. Elms:

17 We have a lot of information. This is your chance to be honest with us, come  
 18 forward like a man, and just say what happened that night. There’s already  
 19 a shit ton happened since you’ve been in here, alright. So, if you want to lay  
 it out there and talk to us, and get your side of the story of what happened.  
 I know, I already know a lot.

20 Mr. Elms: Okay.

21 Agent: Is that something you want to do? Do you want to talk to us?

22 Mr. Elms: No,<sup>6</sup> I have nothing to say about it other than that.

23 Agent: No?

24 Mr. Elms: No.

25 Agent: Okay, okay. So surveillance footage, man [...] shows it, those guns  
 are gone, you’re getting done dirty right?

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27 \_\_\_\_\_  
 28 <sup>6</sup>The Court agrees with Mr. Elms that he said no (ECF No. 70 at 1-3), and correspondingly disagrees with the government that Mr. Elms said ‘nuh’ (ECF No. 68 at 5, 5 n.2), but also does not see why this distinction matters.

1 (*Id.* at 27:00 to 27:47.) Mr. Elms then responds no after asking what the agent means by  
2 'getting done dirty.' (*Id.* at 27:47-27:49.)

3 The next several minutes of the conversation proceed in a similar fashion, with the  
4 ATF agents trying to get Mr. Elms to admit to his involvement in the burglary, by  
5 suggesting that he has been lying and revealing more information they have about him,  
6 and Mr. Elms denying any involvement, in part by explaining that he could get killed if he  
7 discloses his involvement. (*Id.* at 27:49-34:00.) At around the 34-minute mark, the ATF  
8 agents explain to Mr. Elms that they may be able to offer him a cooperation agreement if  
9 he can help them locate the guns stolen from the hardware store. Mr. Elms asks the  
10 agents, "what would you do, man?" (*Id.* at 34:22-34:25.) One of the ATF agents again  
11 encourages Mr. Elms to cooperate in response. (*Id.* at 34:25-34:42.) Mr. Elms then  
12 reveals, "I provided a ride." (*Id.* at 34:43-34:45.)

13 From that point on in the interview, Mr. Elms explains his involvement in the  
14 burglary of the hardware store (and the distracting brushfire) and provides the ATF agents  
15 with related information. (See *id.* at 34:45-1:16:31.)

### 16 **III. DISCUSSION**

17 Mr. Elms' Motion focuses on a few minutes of the audio recording of his  
18 interrogation by the ATF agents at the WCDF. Mr. Elms argues that he invoked his right  
19 to remain silent during this portion of his interrogation, but the ATF agents nonetheless  
20 persisted questioning him in violation of his *Miranda* rights, warranting suppression of the  
21 post-invocation statements and any derivative evidence. (ECF No. 62 at 6-8.) The  
22 government counters that Mr. Elms was properly *Mirandized* at the outset of the  
23 interrogation, he signed a consent form, and he never unambiguously invoked his right to  
24 remain silent during the pertinent portion of the interrogation. (ECF No. 68 at 6-10.)  
25 Instead, the government argues that Elms' statement, "[n]o, I have nothing to say about  
26 it other than that[,]" was another denial from Elms that he was involved in the burglary.  
27 (*Id.* at 8.) The Court agrees with the government.

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1 Mr. Elms makes a valid argument that does not quite fit the facts of the  
 2 interrogation. To start, the legal rule governing the Motion is undisputed: agents must stop  
 3 questioning a previously *Mirandized*, in-custody detainee if that person unambiguously  
 4 invokes their right to remain silent, and any statements obtained following that  
 5 unambiguous invocation may be suppressed. *See Jones v. Harrington*, 829 F.3d 1128,  
 6 1142 (9th Cir. 2016) (“The Supreme Court has repeatedly made clear that when a suspect  
 7 simply and unambiguously says he wants to remain silent, police questioning must end.”).  
 8 The facts are not really in dispute, either. The parties agree that the key portion of the  
 9 recording of the interrogation for purposes of the Motion is from about 25 minutes to 28  
 10 minutes. (ECF Nos. 62 at 3-4, 68 at 4-5.) And the Court has excerpted its understanding  
 11 of that portion of the recording in Section II, above. The Court must therefore simply pick  
 12 between the parties’ competing interpretations of the key portion of the recording.<sup>7</sup>

13 Having listened to the recording several times, the Court’s view is that, in the  
 14 context of the interrogation, Mr. Elms’ statement, “[n]o, I have nothing to say about it other  
 15 than that[,]” fits with Mr. Elms’ consistent, though periodically undercut, denials of any  
 16 involvement in the burglary until later on in the interrogation. It is not an invocation of  
 17 his right to remain silent. Mr. Elms was instead stating that he did not know anything else  
 18 about the burglary because he was not involved, as he had been doing for several  
 19 minutes leading up to that point in response to the ATF agents’ prompting that he admit  
 20 to his involvement in the burglary. (See ECF No. 62-2 at 22:13-27:47.) Mr. Elms also  
 21 persisted in that tactic for several minutes after saying “[n]o, I have nothing to say about  
 22 it other than that[,]” before eventually admitting to his involvement in the burglary. (*Id.* at  
 23 27:48-34:45.) Thus, viewed in context of the interrogation, the statement “[n]o, I have  
 24 nothing to say about it other than that[,]” is yet another denial of involvement in the  
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26 <sup>7</sup>Mr. Elms requested an evidentiary hearing. (ECF No. 62 at 1.) The government  
 27 opposed his request. (ECF No. 73.) After reviewing the briefs and evidence submitted,  
 28 the Court decided an evidentiary hearing was unnecessary. (ECF No. 74.) As noted  
 herein, the Motion hinges on the Court’s interpretation of the conversation that was  
 undisputedly recorded and submitted with the Motion as Exhibit 2 (ECF No. 62-2).

1 burglary rather than an invocation of his right to remain silent.<sup>8</sup> See, e.g., *United States*  
 2 *v. Meza*, Case No. 15CR3175 JM, 2016 WL 4479396, at \*6 (S.D. Cal. Aug. 25, 2016),  
 3 *aff'd*, 800 F. App'x 463 (9th Cir. 2020) (reaching a similar conclusion where “the statement  
 4 reasonably appears to be no more than a denial, or effort to withhold, further  
 5 information.”).

6 Admittedly, and as Mr. Elms argues (ECF No. 70 at 4-5), Mr. Elms’ statement,  
 7 “[n]o, I have nothing to say about it other than that[,]” followed the questions from the  
 8 agent “[i]s that something you want to do? Do you want to talk to us?” (ECF No. 62-2 at  
 9 27:00-27:47.) Out of context, this could sound like an invocation of Mr. Elms’ right to  
 10 remain silent. But, as described above, within the context of the give-and-take of the  
 11 interrogation, this statement is better interpreted as another denial of involvement in the  
 12 hardware store burglary.

13 Moreover, there are two key words in Mr. Elms statement that make it an additional  
 14 denial of his involvement in the burglary of the hardware store instead of an invocation of  
 15 his right to remain silent—‘it’ and ‘that.’ In the context of the interrogation, ‘it’ must mean  
 16 the burglary, and ‘that’ must mean Mr. Elms’ most recent-in-time denial that he was  
 17 involved in it. That also makes this statement distinguishable from the statement at issue  
 18 in *Jones*, 829 F.3d 1128—the principal case that Mr. Elms relies upon in his Motion. (ECF  
 19 No. 62 at 7-8.) The statement at issue in *Jones* was the superficially similar statement “I  
 20 don’t want to talk no more, man.” *Jones*, 829 F.3d at 1134. But the *Jones* statement lacks  
 21 the ‘it’ and ‘that’ making the most reasonable interpretation of Mr. Elms’ statement that he  
 22 was not going to change his position that he was not involved in the burglary of the  
 23 hardware store—though, of course, he ultimately did change his position. Said otherwise,  
 24 Mr. Elms did not broadly state that he did not want to talk any more, like the defendant

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 26 <sup>8</sup>There is also no dispute that the ATF agents read Mr. Elms his *Miranda* rights at  
 27 the beginning of the interrogation, and Mr. Elms voluntarily signed a consent form. (ECF  
 28 No. 68-4 at 2 (stating as such), 4 (signed consent form); see also ECF No. 62-2 at 2:20-  
 3:30 (reading Mr. Elms his *Miranda* rights and Mr. Elms signing the consent form).) However, Mr. Elms could still have subsequently invoked his right to remain silent. See  
*Jones*, 829 F.3d at 1133, 1137-42 (9th Cir. 2016). But as explained herein, the Court finds  
 that he did not.



1 did in *Jones*. See 829 F.3d at 1134. He was instead denying he was involved in the  
2 burglary.

3 And it was reasonable that the ATF agents apparently did not interpret Mr. Elms’  
4 statement as an invocation of his right to remain silent because Mr. Elms had admitted  
5 minutes earlier that he ‘maybe’ knew something about the burglary despite his consistent  
6 denials (ECF No. 62-2 at 19:55-19:56), and he spontaneously mentioned the name of the  
7 hardware store before the agents did (*id.* at 20:03-22:10). It was therefore reasonable for  
8 the ATF agents to infer Mr. Elms was lying about his involvement in the burglary, push  
9 him despite his denials, and see his statement “I have nothing to say about it other than  
10 that” as fitting within the pattern of denials Mr. Elms was offering them instead of  
11 interpreting the statement as an invocation of his right to remain silent.

12 At best, Mr. Elms’ statement, “[n]o, I have nothing to say about it other than that[,]”  
13 is an ambiguous invocation of his right to remain silent—and even that would not be  
14 enough to cut off the interrogation. See *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010);  
15 see also *Jones*, 829 F.3d at 1137 (acknowledging that *Berghuis* added another layer to  
16 the *Miranda* inquiry: “Whether the suspect invoked his right to remain silent  
17 *unambiguously*.”) (emphasis in original). But again, given the context of the interrogation,  
18 and as detailed above, the Court does not find Mr. Elms’ statement an unambiguous  
19 invocation of his right to remain silent. The Court will accordingly deny the Motion.

#### 20 **IV. CONCLUSION**

21 The Court notes that the parties made several arguments and cited to several  
22 cases not discussed above. The Court has reviewed these arguments and cases and  
23 determines that they do not warrant discussion as they do not affect the outcome of the  
24 Motion before the Court.

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1 It is therefore ordered that Defendant George Wyatt Elms' motion to suppress  
2 (ECF No. 62) is denied.

3 DATED THIS 30<sup>th</sup> Day of September 2021.

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6 MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE